



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

Docket No. USCG-2022-0237

RIN 1625-AA09

Drawbridge Operation Regulation; Keweenaw Waterway, between Houghton and Hancock, MI

AGENCY: Coast Guard, DHS.

ACTION: Notification of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating schedule that governs the US41 Bridge, mile 16.0, over the Keweenaw Waterway between the towns of Houghton and Hancock, Michigan. The Michigan Department of Transportation, who owns and operates the bridge, has requested a change to the drawbridge operation schedule to help facilitate the movement of all modes of transportation at the bridge. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must reach the Coast Guard on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2022-0237 using Federal Decision-Making Portal at <https://www.regulations.gov>.

See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. Lee D. Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone 216-902-6085, e-mail Lee.D.Soule@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
IGLD85	International Great Lakes Datum of 1985
LWD	Low Water Datum Based on IGLD85
OMB	Office of Management and Budget
MDOT	Michigan Department of Transportation
NPRM	Notice of Proposed Rulemaking (Advance, Supplemental)
§	Section
U.S.C.	United States Code

II. Background, Purpose and Legal Basis

The US41 Bridge, mile 16.0, over the Keweenaw Waterway between the towns of Houghton and Hancock, Michigan, is owned and operated by MDOT and is the only crossing over the waterway. The US41 Bridge, mile 16.0, over the Keweenaw Waterway is a combination highway and railroad double deck lift bridge that provides a horizontal clearance of 7-feet in the down position, 103-feet in the open position, and 35-feet in the intermediate position above LWD.

The Keweenaw Waterway divides the Keweenaw Peninsula and is in the middle of the south shore of Lake Superior, a Great Lake known for hazardous weather conditions.

The federal government improved the Keweenaw Waterway in 1861 to accommodate interstate commerce and create a harbor of safe refuge for vessels caught in bad weather and is located halfway between Duluth, Minnesota and Sault Ste. Marie, Michigan. Commercial vessels, including some over 700-feet in length, and powered and non-powered recreational vessels utilize the waterway. The passenger vessel RANGER

III operates from the east side of the US41 Bridge, mile 16.0, over the Keweenaw Waterway to Isle Royal and is operated by the National Park Service with a capacity of

128-passengers. A U.S. Coast Guard Station is located at the far west end of the waterway.

The bridge has special operating conditions listed in 33 CFR 117.635 that requires the bridge to open on signal; except that from April 15 through December 14, between midnight and 4 a.m., the draw shall be placed in the intermediate position and open on signal if at least 2 hours' notice is given. From December 15 through April 14 the draw shall open on signal if at least 12 hours' notice is given.

MDOT has requested a new operating schedule to relieve commuter and commercial vehicle traffic congestion at the bridge on weekdays; the new schedule will not apply to federal holidays. Traffic data impacted by COVID-19 restrictions would not provide the public with an accurate assessment of the traffic conditions at the bridge and have intentionally not been considered.

III. Discussion of Proposed Rule

The MDOT requested three "rush hour restrictions for openings at the bridge to ease the traffic congestion at the crossing. During the test deviation we gathered data and proved there was not three rush hours at the bridge but rather a gradual increase throughout the day in the number of vehicles crossing the bridge. From there we developed a test deviation to gather data throughout the summer and developed the proposed rule.

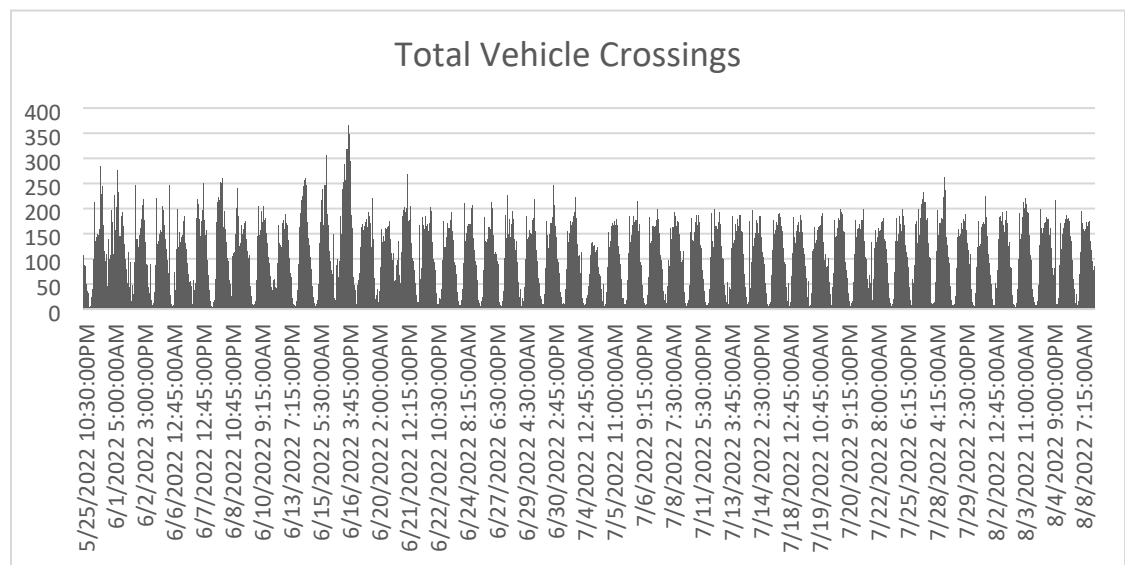
On November 1, 2022, we published in the Federal Register (87 FR 30418) a Notice of temporary deviation from regulations with a request for comments. The commenting period was open from May 1, 2022, through November 1, 2022, to give everyone ample time to observe the test deviation and comment. The State of Michigan's Department of Transportation gathered data throughout the test deviation, and we will present that data later in this document.

The test deviation and how the public could comment was shared in the local online

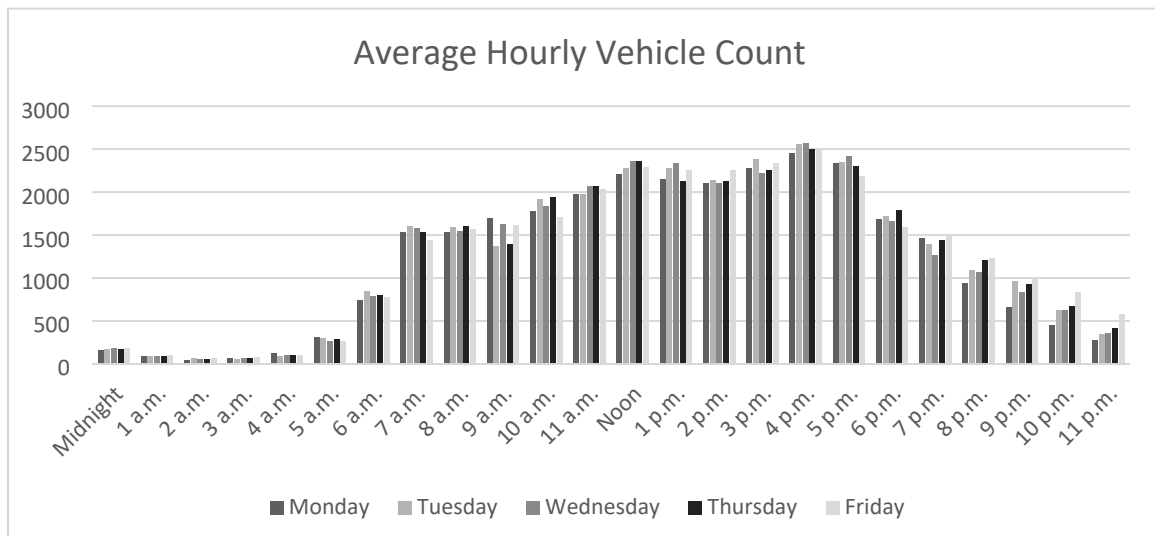
newspapers, television, and radio stations. The Coast Guard informally reached out to local government and local marine users before the test deviation was started to see what the perceived issues were at the bridge and how scheduled openings could help alleviate the disparities between vehicle crossings and vessel traffic.

The Coast Guard advertised the test deviation in the Local Notice to Mariners and a Broadcast Notice to Mariners that was also released. The Ninth Coast Guard Bridge Office also included the test deviation in its weekly bridge email that is shared with approximately 350 waterway users.

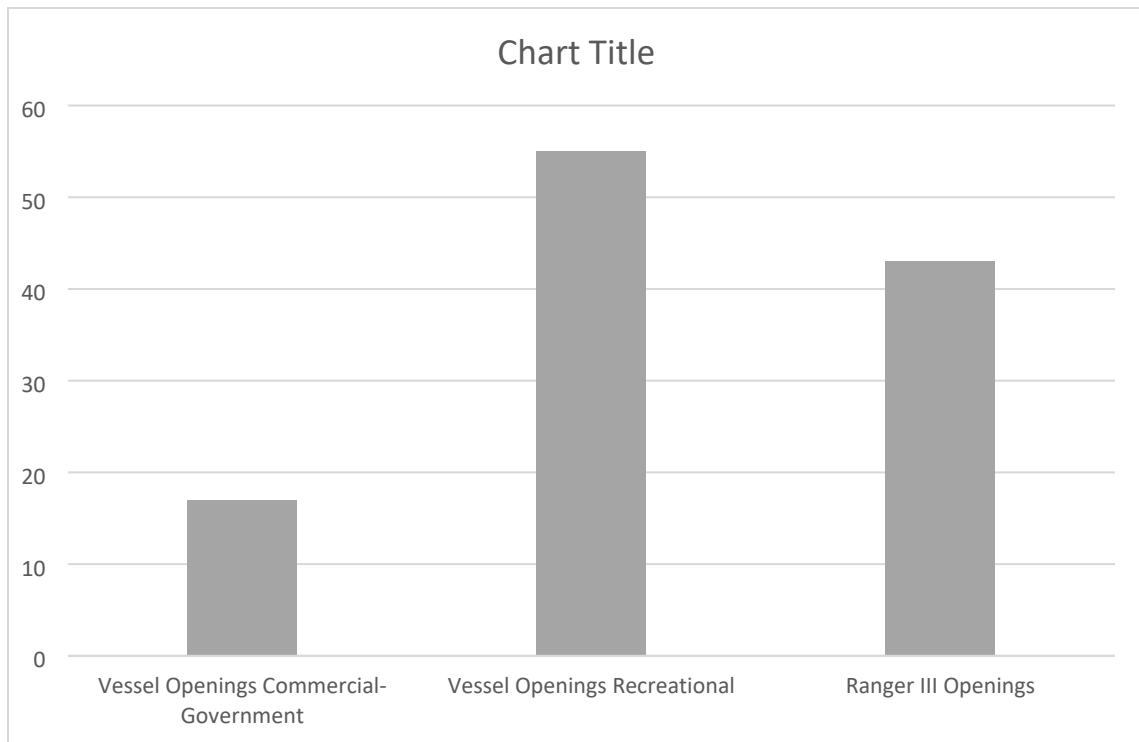
The Michigan Department of Transportation provided vehicle crossing data during the test deviation to discover if there were peak traffic hours often referred to as rush hours at this crossing. The following chart shows the vehicle data collected.



There is a traffic spike on June 15 and June 16 associated with a festival celebrating the bridge. Otherwise the data proves the delays at the bridge are not commensurate with traditional rush hour times and limiting bridge openings to three times a day would not help elevate congestion at the bridge. The bridge experiences a steady flow of traffic from 7 a.m. to 7 p.m.



Local politicians and law enforcement departments insisted that there are three definite rush hours at the bridge and limiting openings during those times would successfully improve the flow of traffic; however, the data provided does not support the theory of three distinct rush hours at the bridge. Based on the data above provided by the MDOT the flow of traffic increases from 6 a.m. to 4 p.m. and then it reduces without any significant spikes typical in a rush hour.



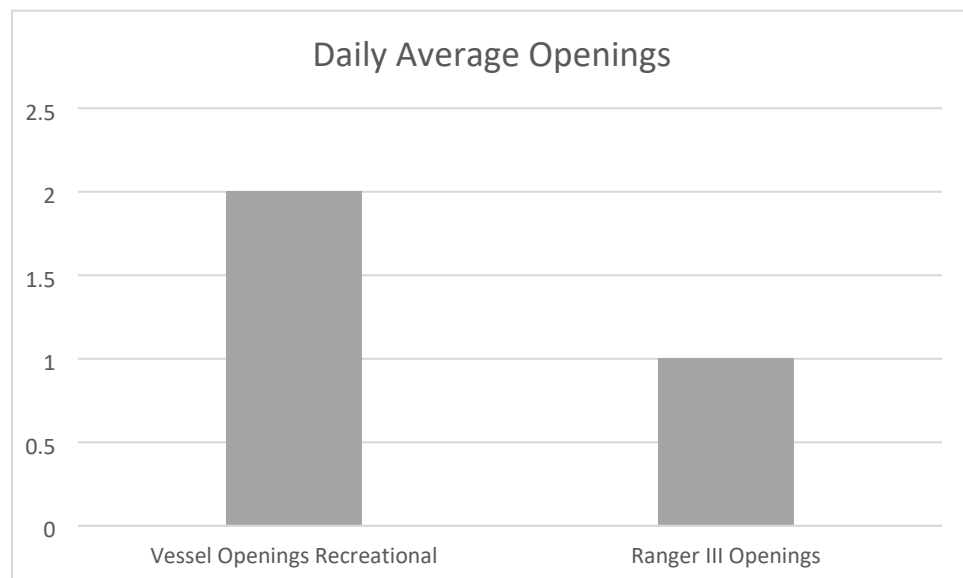
We analyzed the data from the test deviation using the drawtender logs to determine what class of vessel requested the most openings. Recreational vessels request openings 55 times between the hours of 7 a.m. and 7 p.m. and the Passenger vessel Ranger III requested 43 openings during the same times.

During the test deviation between 7 a.m. and 7 p.m., Monday through Friday, less federal holidays, vessels 300 feet and smaller were required to wait for an opening on the hour or half-hour. This limited bridge openings to a 20-minute period every hour allowing vehicles to cross the bridge during the other 40-minutes. The test deviation proved that the reasonable needs of navigation can still be met at the bridge with scheduled openings.

We invited the public to comment on this test deviation and we received three comments. Two commentators provided an analysis based on their personal preference without providing any supportive data. The third comment was from the National Parks Service – Isle Royale National Park.

The National Parks Service stated the test deviation did not provide any opportunity for stakeholder input prior to its implementation. However, in fact, the Coast Guard reached out directly to the park and the Passenger Vessel Ranger III when we reached out to local stake holders prior to developing a test schedule. With the assistance of the MDOT and local Coast Guard Units we received comments from the city of Houghton and Hancock, the Upper Peninsula Health Care Group, the Houghton County Board of Commissioners, the Aspirus Keweenaw Hospital, the Houghton County Sheriff Office, and the Michigan Department of State Police Calumet Post. Additionally, the local news outlets ran stories and interviews that the Coast Guard was considering a schedule that would help balance both land and waterway modes of travel at this crossing. Prior to the test deviation going into effect several news outlets published the test deviation to the public.

National Parks Service – Isle Royale National Park also commented that the temporary deviation negatively impacted their passenger vessel, the Ranger III, by adding expense to their services and claimed a significant inconvenience to passengers without providing any data on how delaying their arrival or departures by 10 or 15 minutes would adversely affect their services.



Almost 50% of the requested openings were from the Ranger III. The Ranger III is not the only issue delaying vehicular traffic, but it is a significant factor to consider if scheduled openings are needed at this location. Awarding the Ranger III clemency to the proposed bridge schedule would fail to balance the transportation needs at the bridge and would eliminate the need for scheduled bridge openings.

Commercial vessels over 300 feet and government vessels normally enter the waterway to service the aids to navigation and stock rock salt for the community. Large commercial vessels holding position in the canal along with recreational vessels is dangerous due to their size and limited maneuverability and will be passed through the draw of the bridge as soon as possible.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive Orders.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the ability that vessels can still transit the bridge twice an hour.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities

during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the

various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule promulgates the operating regulations or procedures for

drawbridges. Normally such actions are categorically excluded from further review, under paragraph L49, of Chapter 3, Table3-1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG-2022-0237 in the search box and click "Search." Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select “Supporting & Related Material” in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions webpage. We review all comments received, but we will only post comments that address the topic of the

proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published of any posting or updates to the docket.

We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 117
Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; and DHS Delegation No. 0170.1,
Revision No. 01.3.

2. Revise § 117.635 to read as follows:

§ 117.635 Keweenaw Waterway

The draw of the U.S. 41 Bridge, mile 16, shall open on signal, except that:

- (a) From April 15 through December 14, between the hours of 7 a.m. and 7 p.m. Monday through Friday, less Federal Holidays, the bridge shall open on signal from five minutes before to five minutes after the hour and half hour for vessels. Documented vessels over 300-feet shall not be held at the bridge but will be passed as soon as possible.

(b) From April 15 through December 14 between midnight and 4 a.m.

daily, the draw shall be placed in the intermediate position and open on signal if at least 2 hours' notice is given.

(c) From December 15 through April 14 the draw shall open on signal if at least 12 hours' notice is given.

M. J. JOHNSTON
Rear Admiral, U.S. Coast Guard,
Commander, Ninth Coast Guard District